The Solicitors' Journal

Vol. 98 October 30, 1954 No. 44

CURRENT TOPICS

Judicial Appointments

MR. JUSTICE PARKER has been appointed a Lord Justice of Appeal in succession to LORD SOMERVELL, recently elevated to the Lords. The Hon. Sir Hubert Lister Parker is a son of the late Lord Parker of Waddington, a Lord of Appeal in ordinary. After being appointed Junior Counsel in Common Law to the Admiralty in 1934 and to the Treasury in 1945, he was made a judge of the King's Bench Division in 1950. Mr. JOHN PERCY ASHWORTH, M.B.E., has been appointed one of the Justices of the High Court of Justice and will be attached to the Queen's Bench Division. He has been Junior Counsel in Common Law to the Treasury since 1950 and before that was Junior Counsel to the Post Office. He received the M.B.E. in 1944.

The Law and the Crimea

ALTHOUGH not a few important events in world history have produced echoes sounding in our law reports, the idler in a law library will not readily find a reference to the Battle of Balaclava, of which the centenary was observed this week. No criminal proceedings ensued in the English civilian courts such as perpetuate a record of the Jameson Raid ([1896] 2 Q.B. 425). That incident was admittedly not an action in the course of war, but that of Ciudad Rodrigo was, and did that not result in the adjourned summons *Re Duke of Wellington* [1948] Ch. 118, even as some of Nelson's lesser exploits gave us *Nelson* v. *Bridport* (1846), 8 Beav. 547? The most pronounced legal repercussion of the Crimean War as a whole seems to have been the establishment of a settled international practice in the matter of naval blockade. The fourth volume of the *Weekly Reporter* (1855–56) contains the judgments in several cases in which the assistance of the Court of Admiralty and, on appeal, the Privy Council, was sought in declaring the legality of the measures taken by the allied powers to seal off the Russian ports from their sources of supply. At the same time there is discernible in the Order in Council recited in *Esposito* v. *Bowden* (1857), 7 E. & B. 763, a somewhat more gentlemanly consideration for certain of the enemy's merchant ships than is now deemed consistent with the prosecution of total war. They were given what now seems a handsome period of grace to complete their business and be gone.

Conformity

WHILE certain of our neighbours north of the Border are engaged in an attempt (so far unsuccessful) to demonstrate that the Income Tax Act, 1952, does not run in Scotland, the courts of both countries continue to deal with questions arising on many statutes which do indubitably operate throughout Great Britain, and to provide evidence of the establishment of a relatively modern special rule of judicial precedent in regard to their interpretation. Scots law and English law know different versions of certain legal phenomena, and the House of Lords may be said to have held an even balance when (on the very subject of taxation) their lordships

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look to English law for a definition of charity (*Pemsel's* case [1891] A.C. 531) and to the law of Scotland for the juridical character of a partnership (*Gibbs* [1942] A.C. 402). The point is that in certain classes of subject-matter the desirability is recognised of a like interpretation of a common statute whichever side of the Border the case arises. Thus, in *Regional Properties, Ltd.* v. *Frankenschwerth* [1951] 1 K.B. 631, Sir RAYMOND EVERSHED, M.R., having postulated this desirability, said that he would always be inclined, in Rent Act cases, to follow a decision of the Inner House of the Court of Session. And so far as courts of first instance are concerned, a corresponding inclination was manifested by Swinfen Eady, J., so long ago as *Re Hartland* [1911] 1 Ch. 459, at p. 466, a case on estate duty. We go possibly too far in calling it a rule, but as a tendency this desire to conform has now led the Divisional Court of the Queen's Bench Division to adopt, in *Cording* v. *Halse, The Times*, 21st October, 1954, an interpretation of s. 26 of the Road Traffic Act, 1930, which its judges plainly would not have originated, but which the Court of Justiciary in Scotland had promulgated in 1936.

Town Planning and Hardship Cases

THE LORD CHANCELLOR made a good beginning to his term of office by promising, on moving the second reading of the Town and Country Planning Bill, that a provision would be included in the Bill which would enable the Minister to authorise payment of an *ex gratia* supplement in cases where small owners suffered hardship. He said that such a provision could not apply to those cases where the land had already been compulsorily acquired; it would not be possible or right to make the supplementary payment retrospective, But it could, and he hoped would, prevent any such cases being possible in the future as had happened recently, where an owner bought land in 1950, paying the full development value, and the land was subsequently acquired compulsorily for housing. Under the 1947 Act the local authority could only pay for existing use value, for, as no claim had been made, nothing was due to the owner for development value. LORD SILKIN, who said it was not often that one had the opportunity of congratulating a Lord Chancellor on his maiden speech, said that he was glad that something was going to be done to meet those unhappy cases.

Actions against Doctors and Hospitals

THE President of The Law Society, Mr. F. HUBERT JESSOP, in a letter to *The Times* of 23rd October, wrote, with regard to actions against doctors and hospitals: "In the administration of the legal aid scheme, the whole purpose of which is to enable those of small or moderate means to have access to the courts to enforce their legal rights, it would surely be impossible to justify the refusal of assistance on the ground that the type of action involved, though one recognised by the law, may be distasteful to the individual members of the committee responsible for granting the civil aid certificate. The reason why a good many claims against doctors are not pursued and really frivolous actions are not numerous is that under the legal aid scheme the certifying committees have to be satisfied on the evidence put before them by the proposed plaintiffs that reasonable grounds exist for launching proceedings, and where the proposed action is in respect of alleged medical negligence the necessary evidence in support would be medical evidence." Mr. N. C. GOLDREIN, writing in the same issue, contended that the competent and conscientious doctor had nothing to fear and he should not claim any immunity from actions for negligence not possessed, for example, by motor bus companies. The letters were prompted by a letter from Sir ERNEST ROCK CARLING, President of the Medical Protection Society, to *The Times* of 19th October, in which he asked whether it was wise to subject those from whom the public has hitherto expected devoted care to any aggrieved claimant's luck in the courts.

Sterilisation Operations

Is it cruelty to a wife for a husband to undergo a sterilisation operation without her consent? In *Bravery* v. *Bravery* [1954] 1 W.L.R. 1169; *ante*, p. 573, a wife complained for the first time thirteen years after the operation, and only after she had left her husband, according to her on account of his ill temper. Not unnaturally the court found that cruelty had not been proved, and this was upheld on appeal. The court observed that it was difficult to believe that any surgeon would perform an operation of this kind on a young married man unless he was first satisfied that the wife consented. The court expressed the opinion that for a man to submit himself to such an operation without good medical reason and without his wife's consent might constitute an act of cruelty. A writer in the *Eugenics Review* for October said that it is left for further consideration what would be the legal result if the husband had sound eugenic reasons for the operation but his wife did not consent. He suggested that it was difficult to forecast how such a case might be decided, "but presumably in certain circumstances the court will hold a man justified in doing acts contrary to his wife's wishes in obedience to a higher duty, which if done without excuse might amount to cruelty." DENNING, L.J., dissented, and the writer thought that a non-legal reader might find this disturbing, especially as he went on to hold that it was a crime even to consent to sterilisation unless done to prevent the transmission of a hereditary disease. As the writer said, however, whether an act is cruel is entirely distinct from the question whether it is a breach of the criminal law and it is right that the courts should be sparing in laying down further rules where fundamental law is not in doubt.

Drunkenness Tests

TILTING at drunkenness tests is an old-fashioned sport of advocates in the criminal courts. Almost an object lesson of how it should be done was given by Mr. Justice STREATFEILD at Worcester Assizes on 22nd October. A motorist accused of being drunk in charge of a motor car had been asked, among other more familiar tests, to multiply $7 \times 7 \times 8$, and had answered incorrectly. Mr. Justice Streatfeild commented: "It does sound a bit formidable. How many sober people could answer it quickly?" Again, commenting on the test of having to stand on each leg alternately with the eyes shut, the learned judge said: "I wonder how many of us, unpractised, could suddenly close our eyes and without swaying, stand on one leg?" The sensible test to apply to the question whether a person is "under the influence" of drink is to ask him to do something which the majority of sober persons can do. A writer in "The Londoner's Diary" of the *Evening Standard* of 23rd October tested three eminent persons, the chairman of the Stock Exchange, who gave the right answer after some thought, an ex-law officer of the Crown and an archæologist, who gave wrong answers. This seems to show that it is a difficult test to the majority of adults, although all parents know that to children of eleven, about to sit a scholarship examination, it is really child's play. Goodness knows what will be a good drunkenness test when they are grown up.

Costs in Any Event

THERE is one event against which no " costs in any event " order can insure, and that is that the party against whom they are ordered will not be able to pay them. In a case at Hitchin County Court, on 22nd October, a road sweeper who had incurred the costs of an unsuccessful action and appeal which were taxed at £970 was ordered to pay them at the rate of 5s. a month. He had sued his employers for alleged negligence as a result of which he said he had contracted a lung complaint. The action and appeal had been supported by funds provided by the Amalgamated Union of Foundry Workers, and for the debtor it was pointed out that the union was under no obligation to pay and, in fact, it would be departing from its express rules if it did so. The county court judge had adjourned the matter in order to give the union an opportunity to consider it. He said that it had never been suggested that the union were legally liable for the costs and they had no desire to make a contribution. It was entirely a matter for them. It is always unsatisfactory for a defendant to find that the unsuccessful plaintiff cannot pay costs. It is hard on the companies insuring employers, but nothing like so hard as it would be on poor persons if they could not sue at all.

A Borough's Legal Advice Centre

SINCE 1950, the free legal advice centre set up by the Lambeth Borough Council has dealt with 400 to 500 cases a year. In his report for 1953, the District Auditor said that in 1950 it had been assumed that it was within the power of the council to run the centre, and he had allowed certain travelling expenses for the solicitors who gave their services free. There was, however, no authority in law which allowed the council to provide accommodation, and clerical and typing services for the centre, and he would have no excuse hereafter for allowing further expenditure of this nature. The Minister of Housing and Local Government had given the council permission to continue until the end of the financial year in March, 1951. The council have stated that they are trying to find other ways of continuing the service, possibly by asking a voluntary body to take it over. The real remedy, as will have to go on being said in and out of season, is to bring into force the legal advice part of the Legal Aid and Advice Act, 1949.

First Sitting since 1737

MANCHESTER Corporation have initiated an action which will revive a court which last sat in 1737. It is against the Manchester Palace Theatre, scene of many a famous pantomime and musical comedy, and alleges that the theatre is unlawfully displaying the city's coat-of-arms above the stage. Solicitors have accepted service on behalf of the theatre and the case will be heard by the Court of Chivalry, which, it is reported, is to be convened by the Earl Marshal, the DUKE OF NORFOLK. The court will occupy the same room in the College of Arms building in London in which it last sat in 1737. In the Manchester Corporation Bill in 1953 there was a clause empowering the corporation to prevent any person using the coat-of-arms without permission—but this clause was withdrawn when the Board of Trade pointed out that two commercial bodies also had the coat-of-arms as part of their trade-mark. The Palace Theatre points out that the coat-of-arms has been in its place since well before the war.

A Law Society Victory

THIS is an age of " photo finishes." In connection with The Law Society's narrow victory of three goals to two in their annual hockey match with the Chartered Accountants at the Old Deer Park on 20th October, it is pleasing for both sides to admit that the contest was so hot that the winning goal was scored from a free hit taken just outside the circle in the last second of the game, and that the whistle blew as the ball entered the net. With such a result, it mattered little whether The Law Society's forwards were too much for the Institute's defence or that KINROSS for the Institute made an exceptional save from BENHAM for The Law Society. The play was the thing, and the result merely emphasised it. May " photo finishes " increase in number if they produce such fast and exciting games.

Taxation

INCOME TAX ON EXCESS RENTS

IT will be remembered that in the case of *Salisbury House Estate, Ltd.* v. *Fry* [1930] A.C. 432; 15 Tax Cas. 266, it was decided that where the owner of property lets it off and receives substantial rents therefor it is not competent upon the Crown to assess him under Case I of Sched. D as carrying on a trade but that the liability of the owner in respect of that property is confined to the Sched. A assessment thereon. Of course, if the gross annual values of land for the purposes of Sched. A assessments were revised each year this would make very little difference, but as they never were revised more often than every five years except at the request of the taxpayer and as it became apparent in 1940 that the revision which was due to take place in the following year was not likely to be effected (and in fact has not yet been effected), provisions which are now found in the Income Tax Act, 1952, s. 175 *et seq.*, were enacted. Their general object was to ensure that the difference between the annual value of the property for Sched. A purposes and the actual income received by the taxpayer should be charged to income tax under Case VI of Sched. D. The purpose of this article is to remind readers of the general principles by which liability is to be computed.

SHORT LEASES

The distinction is taken between cases where rent is received under a " short lease " and cases where rent or other income is received from sources other than short leases: a short lease is defined in effect by the Income Tax Act, 1952, s. 172 (1), as a lease not exceeding fifty years or one taking effect as a term determinable on death or marriage. Accordingly the majority of cases which are met in practice will be cases of short leases and will fall to be dealt with under the provisions of the Income Tax Act, 1952, ss. 175, 176. The distinction between the two sections is that s. 175 deals with the straightforward case where the property comprised in the lease forms part of or is a single unit of assessment and the rent is payable to the immediate lessor of that unit and his estate or interest is not subject to any lease which comprises other property not forming part of that single unit of assessment. All other short leases are dealt with by s. 176.

Section 175

The ordinary case where a dwelling house is let off in rooms or small flats will therefore fall within the provisions of s. 175, and it is proposed to consider the steps that have to be taken to ascertain the charge.

1. It is first necessary to ascertain a notional gross annual value, that is to say a gross annual value computed by reference to the rents actually receivable by the immediate lessor as distinct from the gross annual value of the premises for Sched. A purposes. To compute such a notional gross annual value one must look at the rents received by the owner from his tenants and at the terms of the tenancies under which they are received. The principles upon which the rent actually payable under a particular tenancy agreement is to be converted into a rack rent are the same as those applied in calculating a true gross annual value for Sched. A purposes and are to be found in the Income Tax Act, 1952, s. 88. One must consider to what extent one party or the other remains liable or incurs liability for rates, repairs or any other outgoings or obligations. When such an examination has been made of each separate tenancy if there is more than one the total of the rack rents so computed produces the notional gross annual value.

It may frequently be found that the owner of the premises does not let the whole of it to his tenants but retains some part for his own use. If this is the case, it is necessary to add to the total of rack-rents something in respect of the part so retained. The principles upon which such addition is to be calculated are to be found in s. 175 (2) of the Income Tax Act, 1952, which specifies that it is to be such part of the Sched. A gross annual value of the unit of assessment as is attributable to the part of that unit which the owner is himself occupying.

2. When this notional gross annual value has been ascertained there is to be deducted therefrom a notional statutory repairs allowance calculated in the manner laid down in the Income Tax Act, 1952, s. 100, for the calculation of the actual Sched. A statutory repairs allowance. That is to say where the gross annual value does not exceed £40 the allowance is one-fourth of that value, where it is between £40 and £50 the allowance is £10, where it is between £50 and £100 the allowance is one-fifth thereof, and where the gross annual value exceeds £100 the allowance which is deductible is £20 plus one-sixth of the excess of £100. The resultant figure is the notional net annual value.

3. From this may be deducted maintenance relief computed in all respects as provided for in the Income Tax Act, 1952, s. 101, but limited, for this purpose, not by the true net annual value but by the notional net annual value computed as explained above (see Income Tax Act, 1952, s. 175 (3)). To the extent therefore that such maintenance relief exceeds that notional statutory relief it falls to be deducted from the notional net annual value.

4. From the final figures so ascertained there is to be deducted the greater of either the actual net Sched. A assessment for the premises or the rent which may be payable by the immediate lessee in respect of the unit of assessment under any short lease or leases. This latter will only apply, of course, where the immediate lessor himself holds the property under a short lease.

The final figure so produced is the amount of the assessment which may be levied under Case VI of Sched. D.

Section 176

This comprises all cases of short leases not within s. 175, that is to say short leases comprising more than one unit of assessment, as where in one lease or agreement *A* lets to *B* both Blackacre and Whiteacre which are separate units of assessment, or short leases not by an immediate lessor as that being is defined by the Income Tax Act, 1952, s. 172 (1) (*a*). It will be appreciated that there may be two or more excess rent assessments in respect of one unit of assessment. Suppose the N.A.V. of Blackacre to be £100. *A* demises it to *B* for £200 per annum and *B* lets it in four parts at £100 per annum each. *B's* assessment will be under s. 175 and *A's* assessment under s. 176.

To ascertain the charge under s. 176 one must aggregate together the various amounts which are set out *in extenso* in that section. They are briefly—

The sum upon which the lessor is liable to pay Sched. A tax, whether by deduction or otherwise, or the rent payable by him under any short lease or short leases, whichever may be the greater.

Tenants' rates borne by the lessor and the cost of any services rendered or goods provided under the terms of lease or tenancy agreement.

Land tax, drainage rates, sea wall expenditure, tithe annuity and other similar outgoings specified in the section.

Maintenance claim expenditure on a five-year average basis so far as it has not been given under any other provision.

The total so ascertained is deducted from the rent receivable by the lessor and the resulting figure is the amount of the assessment which may be levied under Case VI of Sched. D.

LONG LEASES

Long leases, that is to say leases for fifty years or more unless determinable on marriage or death are dealt with, together with some other miscellaneous payments, in the Income Tax Act, 1952, s. 177, which proceeds in a different manner. In fact most leases to which the provisions apply are leases at ground rents. It is not common, although it is by no means unknown, to have so long a lease at a rack-rent.

However that may be, the section proceeds to charge the whole of the rent receivable to tax under Case VI of Sched. D except in so far as it may be otherwise taxable under some other case of that Schedule—e.g., as a profit of a trade. At the same time it is provided that such rent shall suffer deduction of tax at source under the Income Tax Act, 1952, s. 169 or s. 170, as the case may be, in the same manner as though it were a patent royalty.

G. B. G.

CORRESPONDENCE

[*The views expressed by our correspondents are not necessarily those of* THE SOLICITORS' JOURNAL]

Is Gilbert Harding Right?

Sir,—Your correspondent, Mr. E. J. Warburton, is entirely right in his view that the public are paying solicitors exorbitant fees for the privilege of buying suburban houses.

Solicitors should have the courage to reduce their fees instead of perpetuating the present arrangement whereby the loss which is incurred by litigation is made good by the profits of conveyancing.

JOHN C. MORRIS.

London, N.6.

A Conveyancer's Diary

NAME AND ARMS CLAUSES

In delivering the leading judgment in *Re Murray* [1954] 3 W.L.R. 521, and p. 716, *ante*, Sir Raymond Evershed, M.R., said that he had been able to reach his decision "on the special (and they are very special) terms of the instrument" which the court had to construe. That doubtless is an indication of the way in which the Court of Appeal approached the problem of construction before them, and the provisions which had to be construed undoubtedly differed from the language usually to be found in the kind of clause which was under consideration, but the general effect of this decision will, I think, be to make it harder than ever to frame a name and arms clause that will work.

There have been a good many reported decisions on these clauses in the last few years, commencing with *Re Fry* [1945] Ch. 348; they are all referred to in the report of *Re Murray*, and I do not propose to analyse them here. It is more important to examine the component parts of the common form name and arms clause and to indicate the various points at which it has been found vulnerable. The clause in its usual form is a defeasance clause, divesting estates which are vested under other provisions of the settlement (which may of course be a testamentary settlement), and as such is always construed strictly. It may be taken as usually providing that any person who becomes entitled to the settled premises for a life or similar interest shall, within some limited time, take or assume, or take, bear and use, a certain (usually the settlor's) surname, either alone or in conjunction with the surname already used by the person becoming so entitled, and also make proper application for permission to bear certain (again, usually, the settlor's) arms. The clause then provides that, if the person becoming so entitled (*a*) shall neglect to assume such surname or shall fail to make such proper application within the time limited therefor, or (*b*) shall at any time disuse, or discontinue to use, such surname or arms, the interest of that person is to cease and the premises go over in favour of other persons. In this reconstruction of a name and arms clause I have used words, such as "take" and "assume" or "disuse" and "discontinue," which are either clearly synonymous or which it has now been held must be regarded as synonymous. This I have done simply because the precise wording of the clause differs slightly according to the book of precedents which is being used, but the effect of these clauses is the same unless (as in *Re Murray*) some quite different provisions are used in a deliberate attempt to avoid some of the difficulties which the court has held to attach to the common form clause. The provision being one which is construed strictly, the court will not be astute to draw distinctions on the language of these clauses, unless forced to do so.

A two-pronged attack is usually delivered on these clauses, the argument on the part of the life or equivalent tenant who does not wish to change his name being that the clause is void (*a*) for uncertainty, and (*b*) on grounds of public policy. The most striking instance of a clause being held void on grounds of public policy is *Re Kersey* [1952] W.N. 541, where the objector was a married woman and Danckwerts, J., said he could think of few things more likely to cause trouble between husband and wife than a provision making it obligatory on the wife to change her surname; in his judgment, the case before him illustrated the fatuity of trying to impose obligations of this sort, which were out of date and inconsistent with the spirit of the times. (I believe that Lord Mansfield once described a clause of this sort as "silly," a precedent for Danckwerts, J.'s use of the word "fatuity" in this connection.) This particular difficulty is, from a purely drafting point of view, sometimes got over by providing that, in the case of a female becoming entitled to the settled property, it is her husband who has to assume the desired name and arms. As will be seen, it is probably easier to get rid of a clause of this kind by arguing that it is void for uncertainty than by advancing grounds of public policy, that well known unruly horse, but this decision and *dicta* in other recent reported cases on this subject show that this alternative argument is one to which the courts will listen and, if need be, respond. The fact that the person presently entitled in *Re Kersey* was a married woman was fortuitous and not, I conceive, essential to the decision, for under a family settlement a married woman may at any time become entitled so that a clause in this form may be said to suffer from the inherent vice that it may at any time offend public policy by subjecting a married woman to the obligation in question. But *quære* whether this argument of public policy, as put forward in *Re Kersey* at least, is available where the obligation to assume another surname, etc., is imposed on the husband of a person entitled, if a female, and not on the latter herself.

As to uncertainty, it is a firmly established principle that where a vested estate is to be divested by a clause of this kind, the condition upon which the divesting is to occur must be such that the court can see from the beginning, precisely and distinctly, on the happening of what event it is that the deceased's estate is to determine: see, e.g., *per* Lord Simonds, L.C. (as he then was), in *Bromley* v. *Tryon* [1952] A.C. 265, 273. Applying this principle to the condition in the common form name and arms clause that a defeasance shall occur if the person becoming entitled shall "disuse" the desired surname, Vaisey, J., in *Re Bouverie* [1952] Ch. 400, held that this word was not sufficiently certain in its meaning to make it possible to ascertain, either prospectively or retrospectively, the precise moment of time, or the precise act or neglect, which would bring the defeasance into operation. In *Re Wood's Will Trusts, ibid.* 406, Wynn Parry, J., followed and applied that decision to the case of a clause in which the operative word was "discontinue." As a result of these decisions, it seems to be virtually impossible to provide for the continued use of a surname or arms by any recipient of the settlor's bounty as a matter of obligation binding the recipient, and as the continued use of the name or the name and arms is the principal object of these clauses, this might have been accepted as the end of this kind of provision.

But the testator in *Re Murray*, *supra*, evidently did not think so. He made his will in 1951, and this contained a name and arms clause in the usual form. Early in 1952, the cases of *Re Bouverie* and *Re Wood's Will Trusts*, *supra*, were decided, and doubtless as a result thereof the testator recast the part of his will which contained the name and arms clause. By a codicil made in June, 1952, he revoked that clause and substituted therefor a provision obliging every person becoming entitled to a certain family estate which was settled in strict settlement by the will to assume the surname of Murray, "either alone or in substitution of his or her usual surname," and apply for authority to bear the testator's arms. The defeasance clause which followed provided that, in case any

person becoming so entitled should neglect to assume the said surname and arms or to make such application within one year after becoming so entitled, the interest of that person should be divested. Finally, the testator expressed his earnest wish that every person becoming entitled to the estate under his will should "continue to use" the surname of Murray and bear the testator's family arms so long as they would be entitled to the estate.

This attempt to give a new look to an old device was unsuccessful; the Court of Appeal held the clause to be void for uncertainty. Three difficulties presented themselves to the Master of the Rolls. Two were entirely peculiar to the wording of the particular clause. The direction to assume the surname of Murray "either alone or in substitution of his or her usual surname" was obviously nonsense, and Upjohn, J., below, had got over this difficulty by treating it as a slip on the draftsman's part and remoulding it. Then there was a lack of correspondence between the language of the direction to assume the name and arms on the one hand and the defeasance provisions on the other, so that as a matter of words alone it was difficult to see what it was that had to be done or omitted to be done to bring the defeasance about. This difficulty the learned judge below had dealt with in a similar way, by in effect supplementing the wording of the defeasance provision. The Court of Appeal expressed doubts whether, in a case such as this, a court was justified in what, from one point of view, could be described as guessing at the testator's expressed intention, and held that on these points alone there was a lack here of that precision which is required if clauses of this kind are to be enforced.

The third reason for this decision, although again given as something peculiar to the document before the court, is to some extent more general. The testator's request, so phrased doubtless with the decisions above referred to in mind, as to continued user of the name of Murray and his arms by persons becoming entitled to the estate, negatived continuous user as a matter of obligation. What, then, did "assume" mean? Could this requirement be satisfied by an assumption of the name and arms and subsequent discontinuance within the year limited by the testator? It was difficult to suppose that this testator could by his language have so intended, and the matter was thus left in real doubt. That was enough to deal with the point before the court, but in the part of his judgment in which the Master of the Rolls considered the meaning of the word "assume" in this context, he let fall certain observations which go beyond the language of the particular document he was construing. He said that had it not been for the part of the codicil in which the testator expressed a request that the name and arms should continue to be used, he would have been strongly moved to the conclusion, based upon some, though slight, authority, that the word "assume" involved both the notions of taking and user. This observation raises the further question, not so far considered in these cases: What degree of user is required before a name can be said to be assumed? (Arms are perhaps in a somewhat different position in this respect, since opportunities for using them are in any event infrequent.) The difficulties of enforcing a defeasance expressed to operate upon a disuse of a name, which on the authorities may be regarded as insurmountable, seem now to be reflected back into the very forefront of this type of provision, making all further attempts to adapt the common form clause to the requirements of these authorities absolutely useless. Perhaps that is not a bad thing.

"A B C"

Landlord and Tenant Notebook

EQUITABLE ASSIGNMENT OF THE TERM

THE main point decided in *Richmond* v. *McGann* [1954] 1 W.L.R. 1282; *ante*, p. 700, was an interesting one: whether a non-resident lessee under a long lease of a dwelling-house which expired at Ladyday, 1950, was entitled to the protection of the Leasehold Property (Temporary Provisions) Act, 1951, and the suspension of the lessors' remedies for dilapidations (s. 5) by reason of her daughter's occupying part and paying her mother a weekly (and economic) rent (a rent book being used). It was held that the daughter was not a member of the tenant's family residing in the dwelling-house "in right of the tenancy." The point is, however, not of lasting interest: those who were protected by the Act are now provided for by the Landlord and Tenant Act, 1954, by virtue of para. 3 of its Ninth Schedule, and given, essentially, ordinary "Rent Act" protections. But it seems likely that the defendant, who was faced with a claim for £967 2s. 7d. for dilapidations, is one whose fate would afford practitioners with another example of the folly, *pace* Mr. Gilbert Harding, of entering into such transactions as the purchase of an estate in realty without the advice of someone of the calibre of Mr. Crusty Rumbold.

The facts: In the year 1851 there came into being the lease of a house in the Regent's Park district of London, habendum ninety-nine years expiring 25th March, 1950, rent £7 4s. a year. In 1945 the residue of the term was acquired by a Miss *B*. In 1946 a firm of house agents "sold or purported to sell" the last three and a half years to the defendant (who had, in 1940, "acquired" the top part, which she used in connection with a boarding-house which she ran in the neighbourhood: it was in 1946 that the daughter's subtenancy came into being) for £150. In 1947 the freeholders sought to serve a schedule of dilapidations on Miss *B*, but were unable to find her. They then got into touch with the defendant, who produced "certain documents," and subsequently accepted rent from her in accordance with the terms of the head lease.

Reference to the authorities does not suggest that the defence were in the least at fault in admitting that there had been an equitable assignment; but I would like, by way of digression, to level some criticism at the writers of textbooks and the compilers of indices thereto for not giving this subject more prominence. It is rightly stated in these works that the Law of Property Act, 1925, s. 52 (1), requires that an assignment, being a conveyance of an interest in land, is void for the purpose of conveying such, unless made by deed. One writer emphasises the importance of delivery of the deed by the assignor, citing *Foundling Hospital (Governors)* v. *Crane* [1911] 2 K.B. 367 (C.A.). But the possibility of equitable assignment, and its consequences, are usually not, or just barely, indicated at this point; and when one comes to consult indices, the index of one book deals with consequences rather than with the proceeding itself; that of another mentions "deed requisite for" in one reference, "equitable" only in a sub-reference under "assignee," and a third index omits all reference to equity when dealing with assignment and assignee under "A": under "E" we find "equitable assignee," with a misleading

statement, "not liable on covenants." It is on following the matter up in the text that we find that such liability may depend on one of two events: taking a legal assignment, or estoppel from denying the assignment, "e.g., by going into possession and paying the rent reserved by the lease." And yet we all know that, while the Law of Property Act, 1925, s. 52 (1), calls for an assignment by deed of even a weekly tenancy created by word of mouth, these and other tenancies are frequently and effectively assigned without regard being paid to that subsection.

There are, indeed, a number of reported decisions in which courts have shown some reluctance to treat an alleged equitable assignment as valid; sometimes this may have been referable to the tendency to lean against a forfeiture, when the question was whether the lessor was entitled to re-enter by reason of breach of a covenant and condition against alienation, not relievable before 1926. *Doe d. Pitt* v. *Hogg* (1824), 4 D. & R. 226 (deposit to secure an advance) and *Gentle* v. *Faulkner* [1900] 2 Q.B. 267 (C.A.) (declaration of trust in favour of a third party) are examples of this attitude. But it is when we come to consider the relationship between the lessor and the equitable assignee (alleged) that the niceties of estoppel have to be gone into, and it will be seen that even in such cases enforcement of the covenants may not prove easy.

There are older authorities, such as *Doe d. Hemmings* v. *Durnford* (1832), 2 Cr. & J. 667, which suggest that mere possession by an irregular assignee will at least put the ball in his court, and that if the landlord can further show that the defendant was "in the habit of" paying the rent reserved by the lease, there is an assignment by estoppel. In *Williams* v. *Heales* (1874), L.R. 9 C.P. 177, which affords a good example of what often happens in actual practice, the plaintiff succeeded on these lines: there was a 61¼ years' lease from 1810; the lessee died intestate in 1814; his widow took out letters of administration, occupied the property, paying the rent, till her death intestate in 1843; then a son-in-law took over without any further grant, collected rent from sub-tenants and paid the rent reserved by the lease, retaining the balance. He died in 1856, and the defendant, who was his son, continued the practice but paid over the balance to his mother till her death, and after that shared it between himself and his sisters. The action was for rent and for damages for breaches of repairing covenants. He was held liable as *executor de son tort*, and also as equitable assignee. Far more was said about the first point than about the second, but a short judgment by Honyman, J., in which he said that if he had listened to the case as a juryman, he would have concluded that the defendant was an assignee of the 1810 lease, reminds us that estoppel is essentially a part of the law of evidence.

But *Tichborne* v. *Weir* (1892), 67 L.T. 735, showed clearly that possession plus payment of rent, or of sums corresponding to rent reserved, will not suffice a landlord seeking to rely on estoppel. The claim was for dilapidations under an eighty-nine years' lease of 1802, which the lessee had equitably mortgaged to one *G*, before disappearing in 1836, when *G* took possession. In 1876, *G* purported to assign the lease to the defendant, who entered into possession and paid "the rent." Strenuous efforts were made to establish that, despite the expiry of the period of limitation, there had been a valid assignment, and the judgments are mainly concerned with this point, little again being said about estoppel. But it was held that the defendant, not having paid "on the footing" that he was an assignee of the lease, was not liable for breaches of the repairing covenants.

In the present century, the operation of the rule and its limitations have been illustrated in two cases. In *Rodenhurst Estates, Ltd.* v. *W. H. Barnes, Ltd.* [1936] 2 All E.R. 3 (C.A.), the grantee had turned himself into a limited company, the defendants in the action, and had applied for and been given a licence to assign the term to them: they went into possession, made the payments of rent; no assignment was ever executed, but they were held to be liable as equitable assignees. But in *Official Trustee of Charity Lands* v. *Ferriman Trust, Ltd.* [1937] 3 All E.R. 85, the Official Referee rejected the Official Trustee's contentions on trying a preliminary point, without evidence being called, and gave us a very useful exposition of the law on this subject. The action was for forfeiture, on the ground of disrepair, of a ninety-nine year lease granted in 1847; the premises had been sub-let in 1848 for the rest of the term, less three days. There had been diverse mesne assignments of the underlease, and ever since 1888 the sub-lessee for the time being had both had possession and paid the plaintiff or his predecessors £33 a year, the amount reserved by the head lease. The plaintiff contended that he (and his predecessors) had thereby been induced to believe that the under-lessee had acquired the head lease; but the learned Official Referee, while not considering *Tichborne* v. *Weir* (much relied on by the defence) exactly in point, distinguished *Williams* v. *Heale* and *Rodenhurst Estates, Ltd.* v. *W. H. Barnes, Ltd.*, in that the parties held to be equitable assignees in those cases were not strangers to the landlords; and held that there had been no inducement in the matter before him because the plaintiff, knowing the law, might have taken the payments to be made either by sub-tenants anxious to avoid distress (Law of Distress Amendment Act, 1908) or as agents for the lessee. There was "no evidence that the rent was not paid by the defendant company as the lessees' agent, or to protect the defendant company, as under-lessees, from a distress."

It is, I think, a pity that in this and some of the earlier cases nothing is said about any characterisation of payers or payments in applications, letters accompanying remittances, or receipts issued; *prima facie*, these might have much bearing on the question whether conduct estopped the defendant. But in *Richmond* v. *McGann*, it would seem that the defendant, in her anxiety to acquire, for £150 and some £22 rent, three and a half years' enjoyment which ultimately cost her £967-odd (and costs), was only too eager to represent to the plaintiffs that she was their tenant under the 1851 lease.

R. B.

A series of lectures on "Public Administration and the Law" is to be held at the Institution of Civil Engineers, Gt. George Street, S.W.1: 8th November, "The Legal Element in Administration," by R. W. Bell, LL.M., Barrister-at-Law, Vice-Chairman, Executive Council, Royal Institute of Public Administration; 15th November, "Criminal Liability of Public Authorities," by G. D. Roberts, O.B.E., Q.C., Recorder of Bristol; 22nd November, "Public Authorities and Civil Obligations," by Harold Willis, Q.C., B.C.L.; 29th November, "Tribunals and Inquiries," by R. M. Jackson, LL.D., Reader in Public Law and Administration, University of Cambridge; 6th December, "Legal Problems of Public Monopoly," by Sir Arthur Comyns Carr, Q.C.; and 13th December, "Law in a Developing Community," by the Rt. Hon. Lord Justice Denning.

All meetings will commence at 6 p.m. Series tickets from the Royal Institute of Public Administration, 76A New Cavendish Street, London, W.1. Members, 6s.; non-members, 10s. Single tickets (members, 1s. 6d.; non-members, 2s. 6d.) may also be purchased in advance.

HERE AND THERE

CENTRAL VACUUM

EVER since the building of the Law Courts the thoughtful have been intermittently oppressed by the problem what to do with the Central Hall. In the mind's eye of the architect and his patrons its windswept expanses were to be crowded with an animated throng of counsel, suitors and witnesses waiting their turn to consult the judicial oracles. The little stone balconies on either side were (so they say) originally designed for the ushers of the respective courts to emerge and call on the cases, Scottish fashion, as they do in the great hall of the Parliament House in Edinburgh. But it was soon realised that to such a call only echo would answer. Everyone else was sure to be drinking in the crypt or loitering in the tea-room or seeking shelter from the gothic draughts in the narrower corridors behind some jutty, frieze, buttress or coign of vantage, with which the building is so liberally, if irrelevantly, supplied. On its one day of glory in the year the Central Hall sees all too briefly deployed the thin red line of the High Court judges, whose steadiness stands between us and social chaos. (It is, of course, the line that is thin; its component members vary considerably in physical density.) This apart, the only recurring festival which seems to have taken root here is the gorgeous if evanescent blossoming of the horticultural exhibition of the officials of the court. They say (though this is hard to verify) that concerts have been given here, but, if that is so, it must have been at hours so obscure, when life had drained from the remotest crannies of the building, that they can have borne no more relation to its waking life than ghostly music from an orchestra of spirits.

FASHION PARADES

So far no other uses have developed. There is even a discouraging lack of impracticable ideas, so that there has been no occasion to put up a notice similar to that displayed in the central hall of one of the American courts, "No Roller Skating." My own favourite project would be to organise a fashion parade here every so often. Close students of the glossier fashion papers will have noticed how often recognisable bits of Lincoln's Inn form an appropriate background for photographing the more luxurious and seductive creations. But a Law Courts fashion parade should, above all, aim at a practical approach, relevant to the life and work of the law as it is or might be affected by female costume. Many subtleties could be expressed in designing (1) the most appropriate costume for a lady solicitor attending a consultation in counsel's chambers (*a*) on the assumption that counsel is also a lady (*b*) on the assumption that he is not; (2) costumes appropriate for a lady barrister in the fundamentally contrasting atmosphere of (*a*) criminal chambers (*b*) common law chambers (*c*) conveyancing chambers. No less important than the professionals and even more in need of guidance are the parties and witnesses. The petitioner and the intervener in a divorce suit, the plaintiff in a breach of promise action, the defendant in a slander action, can each, if she seriously considers what she is about, convey as much in tone and colour and cut as in words or facial expression. A juristic Dior could manipulate the scales of justice as subtly as the most practised advocate. Then, of course, since marriage making as well as marriage breaking is present to the consciousness of women in the law, there should be a matrimonial section with designs appropriate to the bride of a junior counsel in early practice, an established solicitor, a distinguished Queen's Counsel, a judge of the Probate, Divorce and Admiralty Division.

PROFESSIONAL INSTRUCTION

SUCH an occasion could be adapted to the instruction of judges and counsel in matters vital to the discharge of their functions. Feminine clothing drifts glamorously in and out of our jurisprudence first in one context and then in another, and a lawyer seriously bent on professional success might well do worse than make it one of his special subjects. Had there existed between the wars the facilities for study which would be provided by such a fashion show as is here being suggested, there would have been no danger of that sensational clash between Mr. Justice McCardie and Lord Justice Scrutton. The judge, whom students of the law reports will remember as both learned and voluminous in his judgments, a great tidier-up of every topic on which he adjudicated, once spread himself with more than even his usual luxuriance of judicial virtuosity on the subject of "necessaries" for a wife who had been particularly lavish in her purchases of underclothing. The case went to the Court of Appeal and the lord justice, in the course of the argument, observed that it was surprising that a gentleman who was a bachelor should be so well informed on that particular subject. The resulting burst of indignation from the learned judge rocked the profession. Only the other day a Commissioner in the Divorce Court was called upon to determine whether a pink satin garment trimmed with lace, worn by a wife when she received a gentleman in her bedroom, was a housecoat or a nightgown. The learned Commissioner, drawing on many years' experience as a married man, pronounced its colour to be "underclothes pink" and its genus nightgown. In quite another context the Court of Appeal had recently to consider the decision of the London County Council to acquiesce in the purchase by a teacher trainee, out of her education grant, of a swimming costume, but not of a tennis dress. The Master of the Rolls found difficulty in appreciating the *ratio* of the distinction, but added that "it would be highly improper for a teacher trainee to swim without any costume at all," a *dictum* which should certainly find its way into some law report headnote if only with a *semble*. Each Law Courts fashion parade could illustrate such problems as they arose, in this case, say, the minimum proper swimming costume for a teacher trainee. In such respects as these England is hardly making any use of the reserves of specialised knowledge on this and kindred subjects locked, untapped, in the breasts of the ladies of the legal profession. Abroad it is otherwise. In the Press there recently appeared photographs of Miss Katarina Bissmarck of Sweden. Blonde, enchanting, elegant, seated on the sands in a bathing costume, she might have been an actress or a beauty queen or a model. In fact she is, at twenty-six, mayor of Sala, near Stockholm, and a district judge, a sort of stipendiary magistrate. Obviously no woman could hoodwink her on any feminine topic. For me, if I lived in her district, the only trouble would be that I would constantly be committing small crimes for the sheer pleasure of appearing before her.

RICHARD ROE.

The Queen has been pleased to appoint Mr. RALPH KILNER BROWN, O.B.E., T.D., to be Deputy Chairman of the Court of Quarter Sessions for the County of Warwick with effect from 18th October, 1954.

Mr. JOHN SWINDALE NIXON, solicitor, of Cardiff, has been appointed Clerk to the Dean and Chapter of Llandaff Cathedral in succession to Col. J. C. Gaskell, solicitor, also of Cardiff, who is retiring in November after seventeen years' service.

REVIEWS

The Housing Repairs and Rents Act, 1954. Edited by THE RT. HON. LORD MESTON, of Lincoln's Inn and the Middle Temple, Barrister-at-Law. 1954. London: Property Owners Protection Association, Ltd. 12s. 6d. net.

This publication examines the Act section by section with great thoroughness. Those who prefer the subject-by-subject and chapter-by-chapter method of textbook writing, however, need not be put off by that statement; there is a well-written Introduction, there are ample cross-references, and on the many occasions on which the Act refers to other enactments, their text is set out in full (but in contrasting type) so as to make resort to the statute book unnecessary. There is a good deal of guidance in which authorities are briefly cited; in the case of those illustrating the meaning of "repair" for the purposes of Pt. I (p. 63), we should have liked to see *Bishop* v. *Consolidated London Properties Co., Ltd.* (1933), 102 L.J.K.B. 257 added to the group, and the statement following the reference to *Daly* v. *Elstree R.D. Council* [1948] 2 All E.R. 13 (p. 67) does rather suggest raising a giant in order to slay him. The summary of case law illustrating the meanings of "furniture" and of "services" (pp. 116–118) and the summary of decisions on the possibly more difficult question of what are "improvements" (pp. 118–119) are very helpful, though here a reference to *Woolworth & Co., Ltd.* v. *Lambert* [1937] Ch. 37 (C.A.) (showing that it is the tenant's viewpoint that matters) might well have been added. What might be called points of conveyancing law are tersely but adequately explained; possibly the suggestion that for the purposes of s. 10 not only a tenant at will but even a tenant at sufferance is a "lessee" who may have recourse to his lessor for part of expenditure incurred at the local authority's behest rather strains the wide definition of "lease" in s. 10 (4), but may not be untenable.

The Housing Repairs and Rents Act, 1954. With Introduction and Annotations by S. W. MAGNUS, B.A., of Gray's Inn, Barrister-at-Law. Reprinted from Butterworth's Annotated Legislation Service. 1954. London: Butterworth & Co. (Publishers), Ltd. £1 2s. 6d. net.

This work commences with an Introduction divided into two parts, one dealing with the background to the Act, and the other with the Act itself. This "introduction" is worthy of special mention because, if it is lengthier than most introductory chapters, it is of real value to those whose task it may be to appreciate the statute. The Act itself is then annotated, section by section, subsection by subsection, and it can be said that the author has been at pains not only to consider the provisions themselves and their meaning and effect, but to visualise problems which are likely to confront the practitioner in connection with those provisions. It may, for instance, be necessary to go into the question what is meant by "this Part of this Act shall be *construed as one* with the principal Act," in s. 22, the answer being supplied by authorities not concerned with housing legislation; or what is a dwelling-house (s. 23 (1)), the answer given in s. 49 (1) being far from complete; when this happens, Mr. Magnus gives us just what the occasion requires. Rather less useful, but certainly interesting, is a fair amount of information about what was said, for and against some of the provisions, when the Act was a Bill under discussion in Parliament.

Current Legal Problems, 1954. Volume 7. Edited by GEORGE W. KEETON and GEORG SCHWARTZENBERGER. On behalf of the Faculty of Laws, University College, London. 1954. London: Stevens & Sons, Ltd. £1 12s. 6d. net.

All but one of the essays collected in this volume were delivered as lectures at University College. In addition, there is included the presidential address of Professor Jolowicz to the Bentham Club on the Civil Law in Louisiana, which is a detached appraisal of the extent to which the two dissimilar systems of the common law and the civil law contribute to the present judicial practice in that State. This informative paper may, with respect, be described as the present volume's high-water mark of irrelevancy from the practising lawyer's point of view. He would certainly be interested in it; from almost every other page in the book he would derive not only enlightenment but also a mental stimulus directly related to his own real or potential problems.

It is perhaps not surprising that such a topical issue as the fusion of the two branches of the legal profession should be touched upon in two of the lectures. Professor R. C. Fitzgerald's views on the rôle of the solicitor in modern society are known to some of our readers. He is a pro-fusionist. Mr. Dennis Lloyd in his lecture on the cost of litigation, a *critique* of the Final Evershed Report, while disavowing any intention of expressing an opinion for or against fusion, puts very attractively the advantages of continued separation. The noticeable thing is that each of these writers emphasises the increasing complexity of the law, now so great that no one can be expert in all its divisions.

But if we cannot attain an expert's deep knowledge, that does not mean that we will not willingly read and readily profit by well-reasoned accounts of important subjects like Law and Order in Kenya, The Status of the International Civil Service, or Constitution-making in British Guiana. And if we say that the lectures on the Tort of Interference with Contracts, Divorce in the English Conflict of Laws and Trustee Investments and American Practice make a more practical appeal we must not be understood as implying that the most severely streamlined professional intellect will not find pleasure and advantage in any of the dozen essays in this collection.

The English Conflict of Laws. Third Edition. By CLIVE M. SCHMITTHOFF, LL.D. (Lond.), LL.B. (Berl.), of Gray's Inn, Barrister-at-Law. 1954. London: Stevens & Sons, Ltd. £2 5s. net.

Previous editions of this work were well received, and deservedly so. They provided a concise exposition of a subject growing in importance and diverse in its sources. His previous success notwithstanding, the author has here carried out more than a mere revision. He tells us that he has endeavoured to recast the book in the form in which he would present it to-day if it were published for the first time. The result is a slightly longer textbook than before, but one which is still manageable in size, for as Dr. Schmitthoff indicates, judicial statements take up less space than the conjectures of learned writers, and this branch of the law is now as fully stated and explained by the courts as any other branch.

This emancipation of the subject is one of the principal changes in the English Conflict of Laws which are emphasised in the preface to this edition. The author also notes a tendency towards consolidation and codification, citing the 1953 Probate Direction as to entitlement to representation of persons dying domiciled abroad, and the Domicile and Renvoi Report. But these are fragmentary indications of a very gradual process, and practitioner and student alike still need in this more than in any other portion of their allotted tasks the guiding hand of a writer of perspicuous skill. Needless to say, their requirements are brilliantly met by Dr. Schmitthoff.

A particularly helpful feature of the book is the generous citation both of authority and of literary commentary. The leading cases—and these include such modern decisions as *Travers* v. *Holley* and the *Bank voor Handel* case—are set out with their facts in a manner which renders a casebook a luxury except for the most detailed references. We can enthusiastically recommend this edition.

The Stock Exchange Official Year Book, 1954. Volume II. Editor-in-Chief, Sir HEWITT SKINNER, Bt. London: Thomas Skinner & Co. (Publishers), Ltd. £7 net (2 vols.).

Volume II of the Stock Exchange Official Year Book contains the "Commercial, Industrial, etc." and "Mines" sections, the combined index to the whole edition, the classified list of quoted commercial companies and the list of Johannesburg securities in which dealings are permitted. The task of showing balance sheets in summarised form has now been completed for nearly all companies, thus giving more detail than the selections of balance sheet items shown in earlier editions.

Register of Defunct and Other Companies, 1954. Editor-in-Chief, Sir HEWITT SKINNER, Bt. London: Thomas Skinner & Co. (Publishers), Ltd. £1 10s., including postage.

This edition of the Register of Defunct and Other Companies contains approximately 22,000 notices of companies removed from the Stock Exchange Official Year Book owing to liquidation, dissolution, etc., including nearly 300 added since the last edition. An up-to-date list of British, Dominion, provincial and colonial government stocks redeemed or converted since 1st January, 1940, is also included.

Country Practice

MARKET DAYS ONLY

I KNEW a solicitor, in practice not half a mile from the Law Courts, W.C.2, who intended to enjoy his old age by retiring to a small and distant market town and there setting up his brass plate. This, I suspect, may be quite a common ambition, and there are really no insuperable difficulties. The idea is that the tempo of a little market town is suited to ageing arteries—even on market days the tempo still seems somewhat *andante*. (I remarked to our London agent's managing clerk, with whom I was marooned for three whole minutes on a traffic island in the Strand, that outside *our* office it wasn't as busy as this, even on market days. He seemed politely surprised.)

Nevertheless, it is a mystery why it should be necessary to open little offices in little market towns on market days only. Surely, with modern transport and the telephone, a person in need of a solicitor could patronise an office open every day, even if it means a ten-mile bus ride to a slightly larger market town? A time-and-motion expert let loose on the problem could prove that a full-time office would enable optimum legal output to be purveyed with a ratio of gross takings to overheads in excess of that proportionately applicable to the part-time office—or words to that effect. But then time-and-motion experts have not made a detailed study of country clients.

Country clients include a large number of the weather-beaten men talking on the pavement outside the largest pub on market days. At first you may wonder why they stand there, for ever talking. You may notice, however, that they do not appear to converse with each other in any usual way: they seem to talk quietly to the town hall clock or the battered bus at the far side of the market square. Then they listen to the passing clouds or the dust in the gutter as their companions reply. They rarely look at one another when they speak. When they do, it generally means (*a*) that they are not discussing agricultural topics, or (*b*) that they have just clinched a deal, and/or (*c*) that one of them has suggested a drink. Mostly they discuss agricultural topics.

Soon, however, one of them disappears. His companion remains, eyeing the church steeple. But the first man, the country client, has disappeared into thin air. Actually he is inside a saloon car parked a few feet away, ordering seed, or fertilizers, or fuel oil. It doesn't do to queue up for the seed salesman; one stands poised on the pavement, talking, until the coast is clear (or the last customer has left the salesman's car). The country client can similarly disappear into the pub, where the cattle food salesman has a little room, or into Messrs. *X and Y's* office, there to make a will, sign a contract, or instruct the solicitors how to deal with the Inspector of Taxes' latest piece of inquisitiveness. (Quite lately our local H.M. Inspector must have given some official gen as to how many eggs average hens lay between the first and last days of an accounting period; hence some pertinent questions as to their poor performances in the farmers' account books.)

The point is that a country client's movements are fairly obvious on most days—the whole village would speculate on his journey to the solicitor's home town. Village curiosity can be whipped up into a positive frenzy by an unaccounted journey. But on market days, now, you can do all manner of things and your neighbours can only guess.

So our market-day-only office continues to function uneconomically—but it pleases some of the clients. If only The Law Society would appoint me their Public Relations Officer (Rural) I would issue a pamphlet on sub-offices and their service to the community. And if banks bring their luxurious caravans to agricultural shows, surely country solicitors should be allowed to put up a tent on the neighbouring stand. In fact, if I were in charge of The Law Society's marquee . . .

HIGHFIELD.

TALKING "SHOP"

October, 1954.

TUESDAY, 12TH

There was a time when the phrase "subject to contract" was well understood between an intending vendor and his intending purchaser to impose—if I may permit myself a much debased term—moral obligations upon both. On the negative side it was employed, as it is to-day, to prevent the parties from coming to a prematurely binding agreement. On the positive side I think it was generally accepted that, once the parties had brought themselves into this relationship, neither would withdraw except for some good reason; bar accidents, they would complete the bargain by formal contract. And it was implicit that neither would have any further truck with third-party purchasers or vendors as the case might be. True, the understanding was of an indeterminate nature which left room for an occasional difference upon the sufficiency of the grounds cited by one or other of the parties for resiling from the contract. But on one point at least everybody was agreed, viz., that the vendor would not look for a higher price nor the purchaser for a different property.

During the last ten years this excellent system has degenerated sadly. Hardly a day passes but I see a letter informing my firm (usually, but not always, with some expression of polite regret) that the writer's client has received a better offer or found a more suitable property and that the deal is "off." Sometimes, of course, no reason is supplied, but one's own client seldom fails to discover it. If the practice is carried much further the term "subject to contract" will become meaningless; it has, I think, already lost much of its utility. Just to illustrate the manner in which it is now abused, a vendor selling to my client "subject to contract" announced at some stage that he had entered into a similar arrangement with two other people. The "winner" was he whose part of the contract reached the office of the vendor's solicitors one Saturday morning, with my client three lengths behind on the following Tuesday. I must own that I thought this was rather good fun for the solicitors concerned (less so perhaps for the losing clients) but the formula "subject to contract" emerges from the contest looking a sorry wreck.

Are there any of us, I wonder, quixotic enough to "fire" the client who will not play this game according to its unwritten rules? Or do we all just make do with a faint note of discouragement and a disapproving glance towards the course proposed? More power, anyway, to the elbows of those who take a strong line and disregard the consequences. There are always convincing reasons for sacrificing principle to expediency: solicitors are not *ex officio* tutors of ethics, the client's last bill is unpaid, and so forth. There should be a medal for those who keep their clients in accord with their own professional standards in such matters. Or,

better still, and more practical, why not a compensation fund for the stalwarts deprived of valuable clients by a strict adherence to the right and proper? Why should the few professional defaulters alone merit such a memorial? And, to make of it a true corollary, the fund should of course be financed indiscriminately by offending and unoffending clients alike and regularly surcharged on their bills. What, I wonder, would Mr. Gilbert Harding have to say about that?

FRIDAY, 15TH

I have remarked before upon the behaviour-pattern of problems, which are apt to bob up in twos or threes—drains this month and (say) after-acquired property clauses the next.

As with problems, so it seems, with people, citing *Mrs. Y* and *Miss X*, whose common denominator I must leave to the reader's perception. *Mrs. Y* arrived with no introduction or appointment. Some attempt having been made to bottle her in the waiting-room whilst enquiries were afoot, she was soon pacing the passage in a frenzy of impatience. And no wonder, for her ex-husband, it seems, had televised her whilst boating on the Thames by the Battersea Fun Fair; two hundred suitors had thereupon mustered near her home; two married solicitors (names supplied) had offered to divorce their wives and marry her, but of these one had disqualified himself by connecting a ticker-tape machine to her wireless set, and both were regrettably prone to share the neighbours' infective enthusiasm for charades. As for *Miss X*, she arrived, it is true, with an introduction of a sort, if you can count as such a conversation in a railway carriage with another client. Her main trouble is caricatures, posted in public houses up and down the country "and in nearly all the shops in London." Questioned, she admits that she has never seen them, but she "knows about them." I am about to ask what the caricatures depict, when she passes on hastily from libel to slander.

Maybe these cases sound amusing and maybe they don't. In fact they are tragic, and it is very difficult, expecially when there are no relations available, to transfer them to the right sort of consulting room. There is much talk, vapid and otherwise, of amalgamation with the Bar. Perhaps what we need is federation with psychologists, but the process would, I fear, result in a loss of many clients in addition to those that we might willingly spare.

WEEK-END REFLECTION

The owl and the pussy-cat went to sea
In a beautiful pea-green boat;
They took some honey and plenty of money . . .
Erratum: no money: See *Re Chapman.*

Little boy blue, come blow up your horn,
The sheep's in the meadow, the cow's in the corn.
On second thoughts don't: put the pig up the tree
And petition the High Court to rescue all three.

(Free rendering of leading counsel's opinion on *Re Chapman*, *Re Churston*, etc.) "ESCROW"

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Incorporated Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

WEST AFRICA: SUCCESSION: ISSUE OF POLYGAMOUS MARRIAGES

Bamgbose *v.* Daniel and Others

Lord Morton of Henryton, Lord Cohen, Lord Keith of Avonholm

15th July; 12th October, 1954

This was an appeal from a judgment of the West African Court of Appeal, dated 2nd June, 1952, in a matter relating to the distribution of the estate, valued at about £100,000, of John St. Matthew Daniel, who died intestate at Lagos on 25th April, 1948. The deceased's parents were married in Lagos in 1890, under the Marriage Ordinance, 1884, of the Colony of Lagos, which by s. 41 provided, *inter alia*, that "where any person who is issue of any such marriage as aforesaid [i.e., a marriage under the Ordinance of 1884] dies intestate . . . the personal property of such intestate and also any real property of which the said intestate might have disposed by will shall be distributed in accordance with the provisions of the law of England relating to the distribution of the personal estates of intestates, any native law or custom to the contrary notwithstanding." The deceased was said to have entered into nine polygamous marriages in Nigeria in accordance with native law and custom, and no question of his capacity to do so by his local law arose. The contest in this appeal lay between the appellant, who claimed as lawful nephew of the deceased to succeed to the whole of the estate, and the respondents, who claimed, as children of the deceased procreated by the polygamous marriages, to exclude the appellant. The effect of the judgment of the West African Court of Appeal was to reject the appellant's claim to oust the respondents from any share in the estate even if they were legitimate issue of polygamous marriages of the deceased. The appellant now appealed.

LORD MORTON OF HENRYTON announced at the conclusion of the hearing on 15th July that their lordships would humbly advise Her Majesty to dismiss the appeal and that they would give their reasons later.

LORD KEITH OF AVONHOLM, giving their lordships' reasons on 12th October, said that the relevant law of England in 1884 was to be found in the Statute of Distributions, 1670 (22 & 23 Car. 2, c. 20). The appellant's contention was that that law precluded the succession on intestacy of children or others who could not claim kinship with the deceased through monogamous marriage; that the respondent claimants, being the offspring of polygamous marriages, fell to be regarded as illegitimate under the English Statute of Distributions and that he, the appellant, being the only person who could claim kinship with the deceased through monogamous marriage, was entitled to the whole estate. The contention for the respondents was that by the law of their domicile of origin they were legitimate children of the deceased and accordingly came within the class of persons entitled to succeed under the English Statute of Distributions. That view had been upheld by the West African Court of Appeal subject to the respondents establishing their status of legitimacy. Their lordships of the Board entertained little doubt that, under what were now well-accepted principles recognised by the English courts, no ground existed in circumstances like the present for excluding the respondents from taking their rights of succession if they were legitimate children of the deceased under the law of their domicile. In the present case the Statute of Distributions was a statute applying to a limited class of persons domiciled in Nigeria. As a matter of construction and on the authorities it could not, in their lordships' opinion, be limited in its local application to children who were the issue of monogamous unions. The effect of the application of the statute in the cases to which it applied was to fix the order of succession according to a table different from that prevailing under native law and custom. The West African Court of Appeal reached a right conclusion, and their lordships had accordingly humbly advised Her Majesty to dismiss the appeal. The appellant must pay the costs of the respondents other than the Administrator-General of Nigeria, who had been appointed administrator of the estate by order of the court, and was not represented before the Board.

APPEARANCES: *Henry Salt*, Q.C., and *A. J. Belsham* (*Rexworthy, Bonser & Wadkin*); *Lionel Edwards*, Q.C., *Bruce Campbell* and *R. A. Williams* (*Hatchett Jones & Co.*).

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law] **[3 W.L.R. 561**

LAND: TITLE: EQUITABLE INTERESTS: PRIORITY

Assaf *v.* Fuwa

Lord Porter, Lord Asquith of Bishopstone, Lord Keith of Avonholm. 4th October, 1954

Appeal from the West African Court of Appeal.

On 9th October, 1948, Antonio Assaf, the plaintiff in the present action, contracted with one Ajose to purchase premises at 130 Denton Street, Ebute Metta, Lagos, Nigeria, of which Ajose was the owner. The property had been mortgaged on 5th July, 1948, and, according to the law of Nigeria, the mortgagees were thus the owners of the legal estate in the premises. By 16th October, 1948, Assaf had accepted proof of Ajose's title and had paid the whole purchase price of £1,600, out of which Ajose was intended by the parties to discharge the mortgage to one Cameron, of the firm of Irving & Bonnar, who was acting as solicitor for both Assaf and Ajose. By a letter dated 25th October, 1948, written by one Coker, a solicitor acting for Ajose, to Irving & Bonnar, Ajose purported to countermand the sale to Assaf, and, on the same date, he purported to sell the same property to one Okunubi. Out of the purchase price of £2,700 paid by Okunubi, Ajose discharged the mortgage debt, but the mortgagees did not reconvey the legal estate in the premises and it remained vested in them at the date of the appeal to the Judicial Committee. On 29th October, 1948, Ajose purported to convey the fee simple in the premises to Okunubi. Assaf commenced an action against Ajose for a decree of specific performance and mesne profits in the Supreme Court of Nigeria, and in a judgment of 28th June, 1949, Gregg, J., made the decree prayed for. In compliance with the judgment, Ajose then executed a conveyance of the premises to Assaf. By a writ of 11th March, 1950, Assaf started the present action against Okunubi for recovery of the premises and mesne profits. After this date Okunubi died and the action continued against his personal representatives.

LORD PORTER, giving the judgment of the Board, said that the real contest between the parties was whether Okunubi obtained priority over Assaf as a purchaser for value, without notice of Assaf's interest, of the legal estate. It was undisputed that neither the plaintiff nor the defendants ever acquired the legal estate; but it was argued for the defendants that priority as between them and the plaintiff depended not on which of them had the legal estate but on which of them had the better right to "call for" it. Counsel for the defendants relied on the contention that, once the mortgage debt had been repaid by Ajose, and Ajose had executed the "conveyance" of 29th October, 1948, in favour of Okunubi, Okunubi acquired a better right than the plaintiff possessed to require a reconveyance of the legal estate from the mortgagees, and should be treated for the purpose of the rule as though that right had been successfully exerted. When the authorities were examined it would be found that in every one of them there was, in addition to the mortgagor's act in redeeming or its equivalent, some positive act by the mortgagee operating in favour of the claimant, and counsel for the plaintiff contended that such an act there had to be to defeat the strict temporal order in which, *prima facie*, equitable interests in land take priority. In the present case there was no transfer of the legal estate to Okunubi; no positive act by the mortgagees which could take its place; no declaration of trust in his favour; no joinder in the conveyance of 29th October, 1948, nor delivery to Okunubi of the title deeds. There was, therefore, it appeared to their lordships, nothing to displace the operation of the principle *qui prior est tempore potior est jure*. There was no doubt who was *prior tempore*. The plaintiff had made his contract, paid the price in full, and accepted the title before Okunubi made his first appearance. In those circumstances their lordships considered that the plaintiff's title must prevail. Appeal allowed.

APPEARANCES: *J. Pennycuick*, Q.C., *T. B. W. Ramsay* and *J. Woodhouse* (*Lewis & Lewis and Gisborne & Co.*); *Lionel Edwards*, Q.C., and *R. A. Williams* (*Hatchett Jones & Co.*).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] [3 W.L.R. 552

COURT OF APPEAL

VALIDITY OF NOTICE TO QUIT: "BY" SPECIFIED DATE

Eastaugh and Others *v.* Macpherson

Evershed, M.R., Hodson and Romer, L.JJ. 6th October, 1954

Appeal from Westminster County Court.

The defendant, Dr. Macpherson, was the tenant of a small office in London let to him by the Executive Committee of the London Diocesan Council for Moral Welfare on a yearly tenancy commencing on 1st April, 1953, and liable to be determined by three months' notice on either side expiring at the end of any year. On 23rd December, 1953, the following letter was sent on behalf of the plaintiffs, who were members of the Executive Committee: "At a recent meeting the executive committee reviewed the question of your tenancy of the small office . . . which we agree you should rent until 31st March, 1954. After some discussion it was decided that, as we now need the accommodation which you occupy, we have to terminate the arrangement and I must ask you, therefore, to accept three months' notice to vacate the office by the date (i.e., 31st March, 1954 . . ." The county court judge held that the notice, in requiring the tenant to vacate "by" 31st March, was a bad notice, since it required him to have left not later than midnight on the night of 30th/31st March. The plaintiffs appealed.

EVERSHED, M.R., said that, on the true construction of the document as a whole, the words "vacate . . . by" 31st March required the tenant to give up possession on or before that date, that the notice was not ambiguous, and it was accordingly valid.

HODSON and ROMER, L.JJ., agreed. Appeal allowed.

APPEARANCE: *Raymond Phillips* (*Ellis, Bickersteth, Aglionby and Hazel*); the defendant appeared in person.

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] [1 W.L.R. 1307

RENT RESTRICTION: SHARED LIVING ACCOMMODATION: ONE TENANT BECOMING LANDLORD

Tovey *v.* Tyack

Evershed, M.R., Hodson and Romer, L.JJ. 5th October, 1954

Appeal from Bristol County Court.

In 1948, the defendant, Ellen Tyack, agreed to take a tenancy of part of a dwelling-house within the scope of the Rent Restriction Acts on terms which included the right to share the use of the kitchen with the plaintiff, to whom the landlord was about to let the remainder of the house. The plaintiff, William Harold Tovey, was the landlord's son, and in 1951 his father by deed of gift granted his interest absolutely to the plaintiff. In February, 1954, the plaintiff, as landlord, claimed possession of the part of the premises let to the defendant. The county court judge made an order for possession and the defendant appealed.

EVERSHED, M.R., said that the applicability of the Rent Acts was to be tested at the time when proceedings commenced. At that time the terms as between the defendant tenant and the landlord included the right to share living accommodation with the landlord and the landlord only. Therefore, s. 8 (1) of the Landlord and Tenant (Rent Control) Act, 1949, did not afford any protection to the defendant. The plaintiff was, accordingly, entitled to possession. His lordship applied *Lockwood* v. *Lowe* [1954] 2 W.L.R. 296; *ante*, p. 127.

HODSON and ROMER, L.JJ., agreed. Appeal dismissed.

APPEARANCES: *J. A. Cox* (*Rider, Heaton, Meredith & Mills*, for *Bobbett Bros.*, Bristol); *Mark Littman* (*Ralph Bond and Rutherford*, for *Veale & Co.*, Bristol).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] [3 W.L.R. 570

LOAN BY PARTNER TO PARTNERSHIP: RECOVERY

Green *v.* Hertzog and Others

Lord Goddard, C.J., Jenkins and Morris, L.JJ. 8th October, 1954

Appeal from Oliver, J.

After a partnership business had been wound up, one of the partners brought an action at common law to recover from two of her former partners and the personal representative of a third deceased partner the total, or alternatively three-fourths of sums advanced by her during the partnership, which she claimed as money lent by her to the partners or the partnership. Oliver, J., dismissed the action finally, holding that, whichever way one looked at it, it was misconceived. The plaintiff appealed.

LORD GODDARD, C.J., said that in his view, too, the action was misconceived. There was no common-law claim here for money lent; it was a loan by one partner to the partnership; it was money lent to the partnership, and s. 44 (2) of the Partnership Act, 1890, showed how that money was to be reclaimed and dealt with. There must be a taking of the account,

and if it were shown that there was enough money in the partnership accounts to repay the plaintiff the money that she had advanced, or some of it, after the creditors of the partnership had been paid, she would get that money in priority to the others. But it was impossible to say that a common-law action for money lent lay against the partners in this case. The appeal must be dismissed.

JENKINS and MORRIS, L.JJ., agreed. Appeal dismissed.

APPEARANCES: *B. B. Stenham* (*Stafford Clark & Co.*, for *Faber & Co.*, Birmingham); *A. Logan Petch* (*Alec Woolf & Turk*, for *Franklin & Co.*, Manchester); *G. C. H. Spafford* (*Manches and Co.*, for *John H. Franks*, Manchester).

[Reported by Miss M. M. HILL, Barrister-at-Law] **[1 W.L.R. 1309**

CHANCERY DIVISION

POWER OF APPOINTMENT: FRAUD: SETTLEMENT: CONDITION TO SETTLE IN FAVOUR OF OBJECTS AND NON-OBJECTS

***In re* Burton's Settlements; Scott and Others *v.* National Provincial Bank, Ltd., and Others**

Upjohn, J. 28th July, 1954

Adjourned summons.

A post-nuptial settlement made by a testator in 1915 conferred on him a power of appointment in favour of such of his issue by any wife as should be born in his lifetime and should attain the age of twenty-one, or being female attain twenty-one or marry, as he should by deed or will appoint, and in default of appointment in trust for all such children. The testator was married twice, first in 1901, of which marriage there was issue, a daughter, *I M B*, who attained twenty-one but died after the issue of the summons. His first wife died in 1922, and he remarried in 1924, and of that marriage there were issue, two daughters, both of whom attained twenty-one and were now married and had issue. On the occasion of his second marriage, the testator executed a marriage settlement dated 19th August, 1924 (and a settlement supplemental thereto dated 4th November, 1924), by which certain trust funds were held on trust for him for life and after his death for his widow during her life with remainder to the issue of that marriage as the testator should during the joint lives of himself and his wife by deed or will appoint and in default of such appointment as the survivor of them should by deed or will appoint and in default of such appointment for the children of the marriage equally. The testator, by his will, dated 20th August, 1924, appointed the income of the 1915 settlement to his second wife so long as she remained a widow. He executed a codicil to his will, dated 13th November, 1930, by cl. 3 of which he exercised the power of appointment in the settlement of 1915, and appointed the property subject to that settlement to the children of the second marriage absolutely. By cl. 8 of the codicil he disposed of his residuary estate after the death of his second wife in favour of the children of his second marriage but if they failed to attain twenty-one to the daughter of his first marriage. By cl. 11 of the codicil he imposed a condition that no daughter should be entitled to a share of his residuary estate except "subject to this express condition namely as regards a daughter of mine by my second marriage that she shall within six calendar months next after my decease if she shall be of full age at my decease or otherwise within six calendar months next after the date when she shall have attained her majority or within such further period as my trustees shall think reasonable or as regards my daughter *I M B* within six calendar months next after the failure of the issue of my second marriage or within such further period as my trustees shall think reasonable execute a settlement of the share hereinbefore appointed to her of the trust funds and property comprised in the post-nuptial settlement . . . and in the case of a daughter of my second marriage also of her share in the trust funds and property comprised in the said second marriage and supplementary settlements containing the same trusts for the benefit of herself and her children and issue and subject to the same powers and provisions *mutatis mutandis* as are declared . . . in my said will and this codicil thereto or either of them of and concerning her share in the trust fund. . . . If any daughter of mine shall refuse or fail to comply with such condition my will shall be construed and take effect as if she had not been a daughter of mine." The testator died on 12th July, 1932. His widow had remarried in 1940 and was still living. By a settlement dated 4th November, 1947, in purported compliance with cl. 11 of the codicil one of the testator's daughters by his second marriage executed a settlement of her share in the settlements of 1915 and 1924 respectively. The court on this summons was asked to determine, *inter alia*, whether the condition in cl. 11 of the codicil was void or valid and effectual; and the effect of that clause having regard to the settlement made in 1947 by one of the testator's daughters by his second marriage.

UPJOHN, J., said that the testator's concluding direction in cl. 11 of the codicil, that if a daughter failed to execute a settlement his will should be construed as if she were not his daughter, did not operate to revoke the appointment in cl. 3 of the codicil of the funds subject to the 1915 settlement, as the condition in cl. 11 only related to the testator's own residuary estate and not to the 1915 settlement. The condition in cl. 11 was not void for uncertainty, since the time within which it could be performed was one readily determinable by the trustees or by the court (see *In re Coxen* [1948] Ch. 747). With regard to the main point whether the appointment constituted a fraud on the power, the mere fact that the appointor had purported to attach a condition intended to compel the appointees to settle the appointed fund in favour of non-objects was not of itself sufficient to constitute a fraud on the power; and there was nothing to be found in more recent authorities which laid greater emphasis on the doctrine of fraud on a power than that in *Duke of Portland* v. *Topham* (1864), 11 H.L. Cas. 32, that the appointor should act "with an entire and single view to the real purpose and object of the power and not for . . . any bye or sinister object." He thought that Vaisey, J., in *In re Simpson* [1952] Ch. 412 had given too literal an interpretation to *Vatcher* v. *Paull* [1915] A.C. 372, which had to be read in the light of earlier authorities which had not been cited in *In re Simpson*. In the present case the "real object and purpose" of the appointment was to benefit the objects of the power, and cl. 11 did not therefore constitute a fraud on the power, and as the condition attached to the enjoyment of the testator's own property and not to the appointed funds it was not an excessive execution. The appointments made by the testator were therefore not fraudulent but valid and effectual and the condition in cl. 11 was binding on the appointees. The settlement made in 1947 by one of the testator's daughters was effectual to catch funds appointed to her in future under the 1924 settlement, since the 1947 settlement was not voluntary but made in consideration of obtaining enjoyment of the testator's residuary estate in accordance with the provisions of his codicil, and the principle of *In re Ellenborough* [1903] 1 Ch. 697 and *In re Brooks' Settlement Trust* [1939] Ch. 993 did not apply. Declarations accordingly.

APPEARANCES: *George Rink* (*Speechly, Mumford & Craig*); *Nigel Warren* (*Routh, Stacey & Castle*); *Michael Browne* (*Speechly, Mumford & Craig*); *A. J. Belsham* (*Stileman, Neate and Topping*).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law] **[3 W.L.R. 581**

SETTLEMENT: RULE IN *HANCOCK* v. *WATSON*: NO ABSOLUTE INITIAL GIFT

***In re* Burton's Settlement Trusts; Public Trustee *v.* Montefiore**

Roxburgh, J. 8th October, 1954

Originating summons.

By a settlement dated 10th April, 1919, and made between the settlor and two trustees, the settlor directed his trustees to stand possessed of a trust fund on trust "to divide the trust fund, or without actual division to treat the same as divided into two parts and to appropriate one of such parts as the share of" each of his two daughters. It was further provided that the share of each daughter should not vest absolutely in her, but should be retained by the trustees on trust during the life of such daughter to pay the income of such share to her and after her death on trust (as to both capital and future income) for the issue of such daughter as in the settlement mentioned. It was also provided that if the trusts concerning the share of either daughter should fail, such share should "accrue by way of addition to the share of" the other daughter, and should be held on the trusts of her original share or as near thereto as circumstances would admit. There

was no gift over in the event, which happened, of both daughters dying without issue. A summons was taken out to ascertain whether the fund was held (*a*) on trust in equal moieties for the personal representatives of the two daughters, or (*b*) on trust for the personal representatives of the last surviving daughter, or (*c*) on a resulting trust for the personal representatives of the settlor.

ROXBURGH, J., said that the question depended on the application of the rule in *Lassence* v. *Tierney* (1849), 1 Mac. & G. 551, and *Hancock* v. *Watson* [1902] A.C. 14, which, as stated by Lord Tomlin in *A.-G.* v. *Lloyds Bank, Ltd.* [1935] A.C. 382, provided that "the absolute initial gift of each share is only cut down if and when and while there is in existence some person qualified to take under the trusts of such share declared in derogation of the absolute gift and to the extent necessary to give effect to the rights of such person." The difficulty was to determine whether there was an "absolute initial gift." It could not in fact be an absolute gift, but must be something that Lord Tomlin later called a "complete" or "full" gift in contrast to a limited gift such as a life interest. There was no case in the books of a direction to divide the trust fund or without actual division to treat the same as divided. That pointed inescapably to an administrative direction, in contradistinction to the attempted creation of a beneficial interest; and read in that context the direction to appropriate each part as the share of each daughter was again a mere administrative direction to the trustees. Nor did the direction that the shares should not vest absolutely create a sufficient beneficial interest. Coming to the accruer clause, in *In re Litt* [1946] Ch. 154, it was argued that the rule applied *de novo* to the accruer clause, so as to carry the whole fund to the surviving share, to the exclusion of the original share, and the court so held. But in that case there was a clear initial gift, while in the present case there was not, and it would be almost impossible to construe the accruer clause as creating a *de novo* application of the rule. The conclusion therefore was that the only gifts to the daughters were in the trusts declared in their favour, which had failed. Consequently, there was a resulting trust for the settlor. Declaration accordingly.

APPEARANCES: *E. I. Goulding* (*Routh, Stacey & Castle*, for *Orford, Cunliffe, Greg & Co.*, Manchester); *A. J. Belsham* (*Stileman, Neate & Topping*); *I. Campbell* (*Gregory, Rowcliffe and Co.*, for *George Gatey & Son*, Windermere).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [3 W.L.R. 574

QUEEN'S BENCH DIVISION

APPEAL AGAINST DUSTBIN NOTICE ALLOWED WITHOUT COSTS: JURISDICTION OF QUARTER SESSIONS TO AWARD COSTS

R. *v.* Lancaster Quarter Sessions; *ex parte* Huyton-with-Roby U.D.C.

Lord Goddard, C.J., Lynskey and Parker, JJ. 13th October, 1954

Application for an order of certiorari.

The Public Health Act, 1936, provides by s. 300 that an appeal to a court of summary jurisdiction against a requirement or other decision of a council shall be by way of complaint for an order, and that the Summary Jurisdiction Acts shall apply. By s. 301, a person aggrieved by any order, determination or other decision of the court may appeal to quarter sessions. A local authority served on the agents of the landlord of certain property a notice under s. 75 of the Act requiring them to provide a dustbin. The agents appealed under s. 300 to the justices, who ordered that the tenant should provide the dustbin, but stated that they would make no order as to costs, without hearing argument or giving reasons. The agents appealed on the question of costs to quarter sessions, who overruled an objection against their jurisdiction and awarded costs to the agents. The local authority applied for an order of certiorari to quash this order.

LYNSKEY, J., said that the local authority contended the agents were not "persons aggrieved" by the justices' order, because a refusal of costs did not affect their rights or property; that before a person could be aggrieved there must be an infringement of some right, and that there was no right to costs. That contention was contrary to the decision in *R.* v. *Surrey Quarter Sessions; ex parte Lilley* [1951] 2 K.B. 749. A successful appellant before justices from a decision of a local authority had a legal right to ask for costs, and to ask that his application should be considered in a judicial manner; he was entitled to costs unless the justices, in the proper exercise of their discretion, held otherwise. In the present case there was no evidence on which the justices could judicially exercise a discretion to refuse costs, so that the agents had been deprived of a legal right. They were therefore persons aggrieved, and entitled to appeal to quarter sessions, who had jurisdiction to entertain the appeal. The order should be refused.

LORD GODDARD, C.J., and PARKER, J., agreed. Order refused.

APPEARANCES: *P. Wrightson* (*Sharpe, Pritchard & Co.*, for *H. E. H. Lawton*, Huyton); *B. Nield*, Q.C., and *G. B. H. Currie* (*Purchase, Clark & Treadwell*, for *Rollo & Mills-Roberts*, Liverpool).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [3 W.L.R. 597

SURVEY OF THE WEEK

HOUSE OF LORDS

PROGRESS OF BILLS

Read First Time:—

Town and Country Planning (Scotland) Bill [H.C.] [21st October.

Read Second Time:—

Town and Country Planning Bill [H.C.] [19th October.

In Committee:—

Transport Charges &c. (Miscellaneous Provisions) Bill [H.C.] [20th October.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read First Time:—

Bank of Scotland Order Confirmation Bill [H.C.] [20th October.

To confirm a Provisional Order under the Private Legislation Procedure (Scotland) Act, 1936, relating to the Bank of Scotland.

Expiring Laws Continuance (No. 2) Bill [H.C.] [22nd October.

To continue certain expiring laws.

Read Second Time:—

Overseas Resources Development Bill [H.C.] [20th October.

Pests Bill [H.L.] [22nd October.

B. QUESTIONS

EXCESS RENT PAYMENTS (REIMBURSEMENT)

Asked whether he would introduce legislation to make it possible for tenants who found, arising from the operation of the Housing Repairs and Rents Act, 1954, that they had been paying above the legal rent, to claim reimbursement for all such rent, Mr. DUNCAN SANDYS said that tenants were entitled to claim reimbursement of all rent paid in excess of the legally authorised rent provided that they made their claim within two years. There was no evidence that the operation of the Housing Repairs and Rents Act had shown that this particular provision needed to be changed. [19th October.

COMPULSORILY PURCHASED LAND (COMPENSATION INCREASE)

Mr. SANDYS said that, arising from the circumstances surrounding the death of the late Mr. Edward Pilgrim, of Romford, Essex, the Government had decided to move an amendment to the Town and Country Planning Bill to enable additional payment to be made in certain circumstances, where public authorities bought land which had had development value in 1948, but in respect of which no claim had been made on the £300 million fund. [19th October.

ROYAL COMMISSION ON CAPITAL PUNISHMENT (REPORT)

Major LLOYD GEORGE said that the Government was not yet in a position to make any statement with regard to the recommendations made by the Royal Commission. [19th October.

HIRE-PURCHASE INTEREST RATES

Mr. PETER THORNEYCROFT said he had seen allegations that extortionate rates of interest were being charged by some hire-purchase traders. The Hire Purchase Orders revoked in July had not controlled interest rates. The Hire-Purchase Acts provided that no agreement covered by the Acts was enforceable unless the attention of the hirer had been drawn to the cash price of the goods in question before any agreement was signed, and the owner could not recover possession of the goods once a third of the hire-purchase price had been paid without obtaining a court order. [21st October.

OBSCENE LITERATURE (LEGISLATION)

Major LLOYD GEORGE said that the law relating to obscenity was not an easy matter to legislate about. On the whole the law had in the past operated fairly, but there were one or two defects into which he proposed to look. [21st October.

STATUTORY INSTRUMENTS

Act of Sederunt (Alteration of Sheriff Court Fees), 1954. (S.I. 1954 No. 1314 (S.147).)
Argyll County Court (Abhuinn Ardnish) Water Order, 1954. (S.I. 1954 No. 1341 (S.153).) 5d.
Draft **Coal Industry Nationalisation** (Borrowing Powers) Order, 1954.
Cold Storage (Control of Undertakings) (Charges) (Revocation) Order, 1954. (S.I. 1954 No. 1362.)
County of Inverness (Allt Na Laraiche Moire, Arisaig) Water Order, 1954. (S.I. 1954 No. 1359 (S.156).) 5d.
Draft **Double Taxation Relief** (Taxes on Income) (Federal Republic of Germany) Order, 1954. 8d.
Draft Double Taxation Relief (Taxes on Income) (Switzerland) Order, 1954. 8d.
Draft Double Taxation Relief (Taxes on Income) (U.S.A.) Order, 1954. 5d.
Draft **Education Authorities** (Scotland) Grant (Amendment No. 5) Regulations, 1954.
Essex River Board Area (Freshwater Fisheries) Order, 1954. (S.I. 1954 No. 1337.)
Firemen's Pension Scheme Order, 1954. (S.I. 1954 No. 1365.) 5d.
Draft **Industrial Diseases** (Miscellaneous) Benefit Scheme, 1954. 8d.
London Traffic (Prescribed Routes) (No. 20) Regulations, 1954. (S.I. 1954 No. 1347.)
Maidenhead Water Order, 1954. (S.I. 1954 No. 1351.) 6d.
Draft **Merchandise Marks** (Imported Goods) No. 1 Order, 1954.
Draft **Pneumoconiosis and Byssinosis** Benefit Amendment Scheme, 1954. 6d.
Retention of Cables over and under Highways (West Suffolk) (No. 2) Order, 1954. (S.I. 1954 No. 1331.)
Retention of Cables and Mains under Highways (Dorsetshire) (No. 2) Order, 1954. (S.I. 1954 No. 1330.)
Retention of Cables, Mains and Pipe under Highways (Dorsetshire) (No. 1) Order, 1954. (S.I. 1954 No. 1329.)
Retention of Cables, Mains and Pipes under Highways (Ross and Cromarty) (No. 2) Order, 1954. (S.I. 1954 No. 1339.) 5d.
Retention of Cables, Mains and Pipes under Highways (West Suffolk) (No. 3) Order, 1954. (S.I. 1954 No. 1332.)
Retention of Mains under Highways (Ross and Cromarty) (No. 3) Order, 1954. (S.I. 1954 No. 1335.)
River Purification Authority (Commencement No. 3) Order, 1954. (S.I. 1954 No. 1342 (C.12) (S.154).)
Seed Potatoes Order, 1954. (S.I. 1954 No. 1336.) 8d.
Stopping up of Highways (Bedfordshire) (No. 2) Order, 1954. (S.I. 1954 No. 1357.)
Stopping up of Highways (Birmingham) (No. 3) Order, 1954. (S.I. 1954 No. 1333.)
Stopping up of Highways (Bradford) (No. 1) Order, 1954. (S.I. 1954 No. 1353.)
Stopping up of Highways (Croydon) (No. 1) Order, 1954. (S.I. 1954 No. 1354.)
Stopping up of Highways (East Suffolk) (No. 2) Order, 1954. (S.I. 1954 No. 1334.)
Stopping up of Highways (Herefordshire) (No. 1) Order, 1954. (S.I. 1954 No. 1338.)
Stopping up of Highways (Liverpool) (No. 2) Order, 1954. (S.I. 1954 No. 1358.)
Stopping up of Highways (London) (No. 44) Order, 1954. (S.I. 1954 No. 1355.)
Stopping up of Highways (Staffordshire) (No. 2) Order, 1954. (S.I. 1954 No. 1352.)
Sutherland County Council (Allt An Lagain) Water Order, 1954. (S.I. 1954 No. 1343 (S.155).) 5d.
Telex Regulations, 1954. (S.I. 1954 No. 1350.) 8d.
Zetland County Council (Helliers Water, Unst) Water Order, 1954. (S.I. 1954 No. 1360 (S.157).) 5d.
Zetland County Council (Whitelaw Loch, Aith) Water Order, 1954. (S.I. 1954 No. 1361 (S.158).) 5d.

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 102–103 Fetter Lane, E.C.4. The price in each case, unless otherwise stated, is 4d., post free.]

POINTS IN PRACTICE

Costs—COMPULSORY LIQUIDATION—NECESSITY OF OBTAINING COPY OF COMMITTEE OF INSPECTION'S AUTHORITY BEFORE ACCEPTING INSTRUCTIONS FROM LIQUIDATOR

Q. For some time I was concerned with a considerable amount of litigation on behalf of a limited company. The company went into compulsory liquidation and a liquidator was appointed. The liquidator orally instructed me to do certain work in connection with the previous proceedings, which was done by me. No written instructions, however, were given. The liquidator at the time, however, intimated that my costs would have to be taxed, as this is insisted upon by the Board of Trade. I duly applied for taxation of costs, but the court office required a resolution of the committee of inspection before my costs could be taxed. This was obtained, but exception was then taken to the fact that the resolution was dated several months after the instructions had been given and the work had been carried out. The position, therefore, was that I could not tax my costs and on the other hand the liquidator was precluded by the Board of Trade from paying them until they had been taxed. I took up the position with the liquidator that he was personally liable and that I could look to him at common law for payment of my costs on the basis of oral instructions. He has not, however, given way apart from making a small offer, without prejudice, which I am not, at the moment, prepared to accept.

A. It is feared that the subscriber is in an unfortunate position here unless he can persuade the taxing office to accept the committee of inspection's authority retrospectively, which is not normally possible. Section 245 of the Companies Act, 1948, states that the liquidator in a winding up by the court shall have power, with the sanction either of the court or of the committee of inspection, to appoint a solicitor to assist him in the performance of his duties, and this is interpreted as meaning that the sanction must be obtained before the solicitor is instructed. In the present case the liquidator employed the solicitor without obtaining the necessary sanction from the committee of inspection, and accordingly the solicitor's costs prior to obtaining the sanction cannot be paid out of the assets of the company. It is agreed that, *prima facie*, if it can be shown that the solicitor was instructed by the liquidator, the latter is personally liable for the costs; but the defence of the liquidator in that case would be that he was not properly advised and should have been informed by the solicitor that he had to obtain the sanction of the committee of inspection before the

Questions, which can only be accepted from practising solicitors who are subscribers either directly or through a newsagent, should be addressed to the "Points in Practice" Department, The Solicitors' Journal, 102-103 Fetter Lane, London, E.C.4.

They should be **brief, typewritten in duplicate,** and accompanied by the name and address of the sender **on a separate sheet,** together with a **stamped addressed envelope.** Responsibility cannot be accepted for the return of documents submitted, and no undertaking can be given to reply by any particular date or at all.

employment. If the subscriber is unable to persuade the taxing office to give retrospective effect to the authority now obtained from the committee of inspection, it is thought that he will be best advised to accept whatever compromise he is able to effect with the liquidator. It is normally the custom of solicitors to require a copy of the committee of inspection's authority before undertaking business for a liquidator of a company that is being compulsorily wound up.

Trust—Appointment of New Trustees—Omission from Deed of Conveyance on Trusts of Referential Settlement—Whether Statutory Implied Vesting Declaration Incorporated

Q. In 1935, the trustees of a marriage settlement in exercise of a power bought a residence for the spouses which was conveyed to the trustees upon the trusts of the marriage settlement, to be deemed part of the wife's fund. In 1938, two of the three trustees of the settlement retired and a new one was appointed by the spouses, but the deed which set out in detail in a schedule the Stock Exchange investments which purported to comprise the trust funds omitted all reference to the real estate, the purchase of which seems to have been overlooked by those who drafted the deed. As this deed of retirement and appointment refers only to the marriage settlement and makes no reference to the trust of the conveyance of 1935, are not the original trustees to whom the property was then conveyed still trustees of the conveyance and of the real estate ?

A. Although the proper course would have been to appoint the new trustees to be trustees of the conveyance of 1935 as well as of the marriage settlement, we are not entirely satisfied that the deed of retirement and appointment was of no effect in this direction. Section 40 (1) of the Trustee Act, 1925, provides that the implied vesting declaration shall, subject to the statutory exemption, operate to vest in the new trustees "any estate or interest in any land subject to the trust." In the present instance, the house bought in 1935 was, by the conveyance to the then trustees, made "subject to the trust" of the marriage settlement. In other words, no new trust was created. We therefore consider that the appointment was sufficient to retire the trustees so far as concerns the house and to appoint new trustees and vest in them the legal estate.

Trustees—Power to Invest in Purchase of Dwelling-house—Whether Empowered to Mortgage

Q. By his will a testator gave freehold property upon trust for sale and investment of proceeds for the benefit of his wife for life with remainders over. The property was subject to a mortgage. Testator directed that on any such sale the trustee should have power to "invest the proceeds of sale in the purchase of another dwelling-house for occupation by my said wife." There was no power given specifically to raise money by way of mortgage on the purchase of the property. Has the trustee any power to raise any part of the purchase money by way of mortgage ? The persons entitled in remainder are infants.

A. The only power which may assist the trustees in the present instance is that contained in s. 16 (1) of the Trustee Act, 1925, whereby it is provided that where trustees are authorised by the trust instrument to "pay or apply" capital money for any purpose or in any manner they are to have power to raise such money by (*inter alia*) mortgage of all or any part of the trust property for the time being in possession. In applying this section to the facts of the present case, it is necessary to bear in mind that "pay or apply" may not mean the same as "invest": *Re Wellsted's Will Trusts* [1949] Ch. 296. Further, the authority to invest in the purchase of a dwelling-house is confined to the proceeds of sale of the present house and does not extend to the whole of the trust premises. It is also possible to say that, as the mortgage would be of the property bought, it is not a mortgage of the trust property for the time being in possession. We are, therefore, very doubtful if the trustees can employ the statutory power to mortgage in the present case. We feel, however, that they are likely to obtain the approval of the court to a mortgage for the purpose mentioned if application is made under s. 57 (1) of the Trustee Act, 1925.

NOTES AND NEWS

Honours and Appointments

The Board of Trade announce that Mr. Albert Reginald Haigh has been appointed Assistant Official Receiver for the Bankruptcy District of the County Courts of Cardiff and Barry, Pontypridd, Ystradyfodwg and Porth, Newport (Mon.), Blackwood, Tredegar and Abertillery; the Bankruptcy District of the County Courts of Swansea, Aberdare, Bridgend, Merthyr Tydfil, Neath and Port Talbot; and also for the Bankruptcy District of the County Courts of Carmarthen, Aberystwyth and Haverfordwest, with effect from 1st November, 1954.

Mr. Edmund Onslow Powell, solicitor, of Bridgend, has been appointed a member of the No. 5 (South Wales) Legal Aid Area Committee.

Mr. Kenneth Round, full time clerk to the Alfreton, Belper and Matlock divisions, has been appointed clerk to the Matlock Magistrates in succession to Mr. James Speakman Potter, who has retired.

Mr. J. C. Wilkinson, at present legal and committee clerk in the offices of the Clerk of the Isle of Ely Council, has been appointed assistant solicitor with the Cambridgeshire County Council with effect from 11th October, 1954.

The following appointments are announced in the Colonial Legal Service: Mr. D. H. Semper, Resident Magistrate, Jamaica, to be Puisne Judge, Jamaica; Mr. A. G. C. Somerhough, Deputy Public Prosecutor, Kenya, to be Puisne Judge, Northern Rhodesia; and Mr. J. E. Durling to be Magistrate, Hong Kong.

Personal Notes

Mr. John William Hawkins has retired from the position of head clerk to Messrs. Cripps and Shone, solicitors, of Marlow. His retirement after being with the firm since 1895 was marked by a complimentary dinner given by his employer, at which the rest of the staff and his former colleagues were present.

Mr. Neville Smallman, assistant solicitor to the Town Clerk of Peterborough, was married recently to Miss Sheila Pamela Ames, of Weymouth.

Miscellaneous

DEVELOPMENT PLANS

County of Brecon Development Plan

The above development plan was, on 29th September, 1954, submitted to the Minister of Housing and Local Government for approval.

The plan relates to land situate within the County of Brecon.

A certified copy of the plan as submitted for approval has been deposited for public inspection at County Hall, Brecon.

Certified copies have also been deposited for public inspection at the places mentioned below:—

Offices of Brecon Borough Council, Steeple Lane, Brecon. Offices of Brynmawr Urban District Council, Alma Street, Brynmawr. Offices of Builth Wells Urban District Council, "Cloverly," Builth Wells. Offices of Hay Urban District Council, Belle Vue, Hay-on-Wye. Offices of Llanwrtyd Wells Urban District Council, Llanwrtyd Wells. Offices of Brecknock Rural District Council, Oxford House, Watton, Brecon. Offices of Builth Rural District Council, "Wyeside," 13 Castle Street, Builth Wells. Offices of Crickhowell Rural District Council, Beaufort Chambers, Crickhowell. Offices of Hay Rural District Council, Belle Vue, Hay-on-Wye. Offices of Vaynor & Penderyn Rural District Council, 25 Victoria Street, Merthyr Tydfil. Offices of Ystradgynlais Rural District Council, Ystradgynlais.

The copies of the plan so deposited are available for inspection free of charge by all persons interested at the places mentioned above between the hours of 9 a.m. and 5 p.m. on Mondays to Fridays inclusive and 9 a.m. and 12 noon on Saturdays.

Any objection or representation with reference to the plan may be sent in writing to the Under Secretary, Welsh Office, Ministry of Housing and Local Government, Cathays Park,

Cardiff, before 4th December, 1954, and any such objection or representation should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the Breconshire County Council and will then be entitled to receive notice of the eventual approval of the plan.

Bury Development Plan

The Minister of Housing and Local Government has approved with modifications the development plan for the County Borough of Bury. The plan, as approved, will be deposited in the town hall for inspection by the public.

EXMOOR NATIONAL PARK DESIGNATION ORDER

The Minister of Housing and Local Government has confirmed without modification the Exmoor National Park (Designation) Order made by the National Parks Commission last January.

DOUBLE TAXATION RELIEF REGULATIONS

The Board of Inland Revenue announce that regulations made by the Commissioners of Inland Revenue extending the existing Double Taxation Relief (Taxes on Income) (General) Regulations, 1946 (S.R. & O., 1946, No. 466) are being published shortly. They are concerned with the case where royalties, etc., are paid without deduction of United Kingdom tax to non-residents who are exempt under a double taxation convention. The existing regulations provide for certain consequential adjustments to the payer's own United Kingdom tax position, and the new regulations make further provisions of the same sort.

COUNTY BOROUGH OF SMETHWICK

The next Quarter Sessions for the County Borough of Smethwick will be held at the Law Courts, Crocketts Lane, Smethwick, on Tuesday, 9th November, 1954, at 10.30 a.m.

NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949

Survey of Public Rights of Way

The following notices of the preparation of maps and statements under the above Act, or of modifications to maps and statements already prepared, have appeared since the tables given in vol. 97 and at pp. 48, 116, 238, 360, 527 and 624, *ante* :—

Draft Maps and Statements

Surveying Authority	Districts covered	Date of notice	Last date for receipt of representations or objections
Cornwall County Council	Camborne – Redruth Urban District	23rd September, 1954	31st January, 1955
Northamptonshire County Council	Daventry Rural District: further modifications to draft map and statement of 9th February, 1953	10th September, 1954	21st October 1954
West Suffolk County Council	Clare Rural District: modifications to draft map and statement of 12th December, 1952	6th October, 1954	11th November, 1954
	Cosford Rural District: modifications to draft map and statement of 5th June, 1953	6th October, 1954	11th November, 1954
	Haverhill Urban District: modifications to draft map and statement of 5th June, 1953	6th October, 1954	11th November, 1954
	Melford Rural District: modifications to draft map and statement of 10th July, 1953	6th October, 1954	11th November, 1954
	Mildenhall Rural District: modifications to draft map and statement of 10th July, 1953	6th October, 1954	11th November, 1954
	Newmarket Urban District: modifications to draft map and statement of 10th July, 1953	6th October, 1954	11th November, 1954

Provisional Maps and Statements

Surveying Authority	Districts covered	Date of notice	Last date for applications to Quarter Sessions
Northampton County Council (Administrative County)	Towcester Rural District ..	20th September, 1954	22nd October, 1954
West Hartlepool County Borough Council	Area of the County Borough ..	8th October, 1954	9th November, 1954
Westmorland County Council	That part of the Borough of Kendal not excluded by Order, Windermere Urban District and South Westmorland Rural District	22nd October, 1954	19th November, 1954

In addition a *definitive* map and statement has been prepared by the County Council of the Administrative County of Northampton covering Daventry Borough, in respect of which applications to the High Court under Pt. III of Sched. I to the 1949 Act would now be out of time.

Wills and Bequests

Mr. R. T. Bowly, solicitor, of Lincoln's Inn Fields, W.C.2, left £86,801 (£86,478 net).

Mr. R. W. Ellett, retired solicitor, of Cirencester, left £89,621 (£89,519 net).

Mr. W. Harrison, solicitor, of Preston, left £14,335.

Mr. G. R. Holt, solicitor, of Rawtenstall, and former president of Bury and District Law Society, left £19,169.

Mr. J. M. Judge, solicitor, of Bromley, Kent, left £21,243.

Mr. H. M. Moss, solicitor, of Northwich, left £20,600.

Mr. G. H. P. Smith, solicitor, of Nailsworth, left £60,526.

OBITUARY

Mr. A. M. AMERY

Mr. Arthur Mason Amery, solicitor, of Cheltenham, died recently. He was admitted in 1930.

PRINCIPAL ARTICLES APPEARING IN VOL. 98

2nd to 30th October, 1954

Lists of articles published earlier this year appear in the Interim Index (to 26th June) and at p. 654, *ante* (3rd July to 25th September)

"THE SOLICITORS' JOURNAL"

Editorial, Publishing and Advertising Offices: **102–103 Fetter Lane, London, E.C.4. Telephone: CHAncery 6855.**

Annual Subscription: **Inland £3 15s., Overseas £4 5s. (payable yearly, half-yearly or quarterly in advance).**

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